IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 13 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GIRDHARBHAI RAMBHAI

Appearance:

MR DIGANT JOSHI ASSTT.PUBLIC PROSECUTOR

for Revision -Petitioner

MR UM SHASTRI for Revision -Opponent

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. This is a Criminal Revision Application filed under Sec.401 read with Sec. 397 of the Criminal Procedure Code, 1973 (in short "Cr.P.C.") by the State of Gujarat challenging correctness, legality and propriety of the order dt. 22nd September, 1992 below Ex.3 and another order dt. 30th November, 1992 below Ex.7 both in Sessions Case No. 63 of 1992 passed by the learned Assistant Sessions Judge, Panch Mahals at Godhra.

2. The facts leading to this Criminal Revision Application as stated in the memo of this revision

application itself are as follows :-

Shri R.K.Badalmiya, P.S.I. of Shahera Police Station filed his complaint against accused who is a revision -opponent in this case.

On the basis of report of one Hiralal Dhulabhai Dabhagar who deals in business of repairing of Umbrellas and also of selling new umbrellas, Shri R.K.Badalmiya, P.S.I. lodged complaint. As per that report, on or about 31st July, 1991, present accused left two umbrellas with Hiralal Dhulabhai Dabhagar who was repairing umbrellas and while repairing umbrellas, some explosion took place, as a result of which wife of Hiralal and his son sustained injuries. It is the case of the complainant that umbrellas were containing some explosive substance. On the basis of report of Hiralal, F.I.R. was lodged by Mr. R.K.Badalmiya and the case was investigated and ultimately chargesheet was filed in the court of Chief Judicial Magistrate, Godhra. At the initial stage, that case which was chargesheeted against accused no.2 in the court of the learned 4th Joint Civil Judge (J.D.) & Judicial Magistrate, First Class at Godhra. That chargesheet was filed for offences under Sec.337 of Indian Penal Code and also under Sec.4 of the Indian Explosive Act, 1908 (in short " the Act"). As the sentence prescribed for an offence punishable under Sec.4 of the Act, is such that accused can be punished with transportation for a term which may extend to 20 years to which fine may be added or with imprisonment for a term which may extend to seven years to which fine may be added, and therefore, the learned Magistrate committed the case under Sec.209 of Cr.P.C. to the Sessions Court, Panch Mahals at Godhra.

During the pendency of the case before the learned Assistant Sessions Judge, Godhra (who will be referred to as the "trial Judge"), the learned advocate for the accused submitted one application Ex.3 on 4th August, 1992 to the court and submitted that in the case, no consent of the Central Government has been obtained by the prosecution before case was chargesheeted, and therefore, the learned Judge of the trial court may pass appropriate order in the interest of justice. As per Sec.7 of the Act, no court shall proceed with the trial of any person for any offence punishable under the Act except with the consent of the Central Government. That application Ex.3 was heard at length and learned Judge of the trial court granted a time to obtain consent under Sec.7 of the Act from the competent authority on or before 22nd November, 1992. No doubt, some observations

were made by the learned Judge of the trial court in Para 5 of the said order but ultimately, the application was allowed and time was granted by the learned Judge of the trial court to prosecution as Investigating Officer had to seek the consent under Sec.7 of the Act from the Central Government. It appears that on 22nd November, 1992, the prosecution could not produce consent under Sec.7 of the Act. On 30th November, 1992, the learned APP for the prosecution submitted application Ex.7 with a request to grant a date so as to enable the prosecution to obtain a consent under Sec.7 of the Act. The learned Judge of the trial court passed an order on 30th November, 1992 below application Ex.7 by which said application Ex.7 was rejected and the accused was discharged keeping in mind the observations made in order below Ex.3.

2. I have heard Shri Digant Joshi, the learned APP for the revision petitioner. I have gone through the orders below application Ex.3 and Ex.7 which are challenged in this Criminal Revision Application.

3. Admittedly, chargesheet was filed against accused for offences punishable under Sec. 337 of Indian Penal Code and Sec.7 of the Act. Sub-clause (a) of Sec.4 of the Act is with regard to causing serious injury by an explosive substance, and therefore, that Section 4(a) is practically in para-materia with Sec.337 of the Indian Penal Code, and therefore, the facts of the case were such that Sec.337 of I.P.Code cannot be dissected from Sec.4 of the Act as both the sections go together, if case is proved against the accused. As per Sec.7 of the Act, no court can proceed further with the trial against any person for an offence under the Act, except with the consent of Central Government.

4. Shri Digant Joshi, the learned APP for the State has argued that Central Government has delegated the powers to the State Government for granting such type of consent under Sec.7 of the Act. Admittedly, State Government has not granted sanction under Sec.7 of the Act, and therefore, the learned Judge of the trial court cannot proceed further with the trial against the accused. It may be noted that offence took place on 31/7/1991 and complaint was lodged on that very day i.e. on 31/7/1991. Thereafter, police case registered on the basis of that complaint, was fully investigated and ultimately chargesheet was filed on 9/1/1992, and therefore, after about five months, chargesheet was filed in the court and lateron that case was committed to the Sessions Court and ultimately it was placed before the

learned Judge of the trial court. It also appears from the order below Ex.3 that on or about 4/8/1992 i.e. about seven months after chargesheet was filed, accused submitted application Ex.3 requesting the court to pass an appropriate order in view of the fact that consent under Sec.7 of the Act which has not been obtained by the Investigating Officer. Looking to the order below Ex.3, the learned Judge of the trial court discussed the facts as well as the events occurred after the chargesheet was filed and he also noted down concession granted by Mr. D.P.Pathak, the learned Public Prosecutor who appeared for and on behalf of the prosecution. As observed in Para 5 of the said order below application Ex.3, Shri Pathak fairly conceded that it was true that no permission was obtained but anyhow he prayed that a time be given to obtain such consent or permission. Shri Pathak conceded that both the offences i.e. offence under Sec.4 of the Act and offence under Sec.337 of Indian Penal Code both go together and if offence under Sec.4 does not survive, court cannot proceed further for want of consent from the State Government, and in that event Sec.337 of Indian Penal Code would also not stand. It is nothing wrong to take down concession made by Mr. D.P.Pathak in the order below application Ex.3. The learned Judge of the trial court discussed the events parawise in Para 6 of the order below application Ex.3. As the learned APP wanted some time to seek the consent from the State Government, the learned Judge of the trial court ultimately granted time upto 22/11/1992, so that prosecution can seek consent of the State Government. The order below application Ex.3 which is challenged in this Criminal Revision Application can be said to be in favour of the prosecution. I find nothing otherwise to hold that this order is illegal or incorrect or perverse. Application Ex.3 was given by the accused to stop proceeding. Instead of granting that application, the learned Judge of the trial court granted time to prosecution so as to enable the prosecution to obtain consent under Sec.7 of the Act, and therefore, order below application Ex.3 cannot be said to be illegal, incorrect or perverse, and therefore, that order is required to be sustained.

5. Now if we peruse the order below application Ex.7 which is also challenged in this Criminal Revision Application, we find that the learned Judge of the trial court has observed in his order that at the first instance, two months time was granted to prosecution and thereafter again the period of one week was granted. Inspite of the fact that reasonable opportunity was given to the prosecution, Investigating Officer could not seek

the consent from the State Government. If really, the prosecution was interested to proceed further with the case, then they could have well managed to obtain consent from the State Government, but it appears that because of inaction on the part of Investigating Officer, prosecution could not produce the consent under Sec. 7 of the Act in the case, and therefore, the learned Judge of the trial court, ultimately rejected the application and accused was discharged from the case. It is pertinent to note that prosecution has not assigned any reason for not obtaining consent under Sec.7 of the Act, though sufficient time was available to Investigating Officer.

6. If the prosecution had in fact moved the Government to obtain the consent from the Government, they could have well produced it before the court. When offences took place on 31/7/1991, time for about one year and four months passed from the date of filing the chargesheet, and therefore, this is not a case in which the learned Judge of the trial court hushed up the case without giving any opportunity to the prosecution. For no fault of accused, the case was being lingered on on and from 9th January, 1992. And therefore, looking to the order below application Ex.7, it cannot be said that order is illegal, incorrect or perverse. After all, it is the duty of the prosecution to see that the trial should be expedited at the earliest so that witnesses can give their evidence from a fresh memory but in this case, the prosecution was not vigilant and the learned Judge of the trial court was constrained to pass order below application Ex.7, and therefore, this court finds that both the orders cannot be disturbed in this Criminal Revision Application, and therefore, this Criminal Revision Application deserves to be dismissed and accordingly, it is dismissed. Rule is discharged.

Date: 28/7/2000. (H.H.MEHTA, J.)
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